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IN THE
Supreme Court of the United States

OCTOBER TERM, 1961

No. **39**

JOSE MARIA GASTELUM-QUINONES, *Petitioner*

v.

**ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE
UNITED STATES**

**On Petition for a Writ of Certiorari to the United States Court
of Appeals for the District of Columbia Circuit**

REPLY FOR PETITIONER

**DAVID REIN
JOSEPH FORER
711 Fourteenth St., N.W.
Washington, D. C.
*Attorneys for Petitioner***

IN THE
Supreme Court of the United States

OCTOBER TERM, 1961

No. 520

JOSE MARIA CASTELUM-QUINONES, *Petitioner*

v.

**ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE
UNITED STATES**

**On Petition for a Writ of Certiorari to the United States Court
of Appeals for the District of Columbia Circuit**

REPLY FOR PETITIONER

1. The government seems to agree (Opp. 5) that the Court of Appeals sustained the order of deportation on the theory that the statute creates a rebuttable presumption of the alien's personal advocacy of violent overthrow of the government from mere membership in the Party. It asserts that this theory conflicts with the decisions of this Court, but concludes that this is

irrelevant. So long as the alien is to be deported, it is, in the government's view, of no consequence that this is being done on the basis of an erroneous theory of law.

2. The government acknowledges that the Court of Appeals rejected petitioner's legal contention that *Rowoldt* requires the government to show something more than mere membership in the Communist Party before a deportation order can validly be issued (Opp. 4-5). It does not argue or even suggest that this contention of petitioner was unsound, or that the court below was correct in rejecting it. Instead, it urges the Court to ignore the entire question on the contradictory and erroneous representation (Opp. 7-8) that the ruling below was bottomed upon factual findings that the petitioner was an active member, and that accordingly, the requirement of *Rowoldt* that more than mere membership be shown was met.

It is true that the petitioner is an alien and thus subject to deportation if the facts in his case bring him within a class ordered deported by Congress. On the other hand, he has lived in this country since he entered in 1920 at the age of 10. He is married and supports his wife, who resides in the United States. He has two American born children and eight American born grandchildren. He has been law-abiding and industrious during his entire stay in the country. There does not appear to be any objective justification for the government's harsh view that neither facts nor law must be permitted to thwart his deportation.

3. As noted in the government's opposition (p. 7, fn. 3), during the pendency in this Court of the peti-

tion for a writ of certiorari¹ the government moved for and was granted summary judgment in the District Court. The petitioner's appeal from this judgment is now pending in the Court of Appeals, No. 16,747.² In the advent of another adverse decision by the Court of Appeals below, petitioner will apply to this Court for a petition for a writ of certiorari to review that judgment as well. Under the circumstances, we submit that it would be more expeditious in the long run, if the Court withheld action on the present petition pending determination by the Court of Appeals of the appeal presently pending before it.³

Respectfully submitted,

DAVID REIN

JOSEPH FORER

711 Fourteenth St., N.W.

Washington, D. C.

Attorneys for Petitioner

¹ Chief Justice Warren had granted a stay of deportation pending the filing and disposition of a petition for a writ of certiorari.

² This appeal raises the additional and important question of the lack of jurisdiction of the District Court to act during the pendency of an appeal, if the purpose or effect of the District Court's action was to interfere with or nullify the action of the higher court. See *7* Moore's Federal Practice 3158-9.

³ We are attaching to this reply a copy of a letter recently received from petitioner's physician. The letter shows that petitioner's early deportation is not practicable in any event.

APPENDIX

CEDARS OF LEBANON HOSPITAL

4833 Fountain Ave.
Los Angeles 29, California
November 22, 1961
RE: GASTELUM, JOSE
OPD #107145

Mr. Maynard J. Omerberg
Attorney at Law
Suite 101, Hollywood-Ivar Building
1741 North Ivar Avenue
Hollywood 28, California

Dear Mr. Omerberg:

In answer to your letter of November 18, 1961, the following is a brief summary of Mr. Gastelum's medical problems and expected course.

Mr. Gastelum was admitted to Cedars of Lebanon as an emergency on November 9, 1961, for acute upper gastrointestinal bleeding. His blood pressure was at shock levels and he required an immediate transfusion of three pints of whole blood. This is the third episode of such bleeding, and following X-ray confirmation of his duodenal ulcer disease, and in view of his intractability on medical management, it has been elected to perform definitive surgery in his case. This will take place early next week. He is currently being managed on close supervision as an inpatient, with diet, antacids and antispasmodic drugs. He is otherwise in good health and should easily withstand the contemplated surgery.

There are, of course, inherent complications involved in a case of this sort. Many patients have prolonged difficulty in readjusting to a smaller gastric pouch and feeding becomes a problem. In addition, there is a certain incidence of recurrence of this disease following surgery. There are on occasions long-term nutritional and anemia problems.

It is for the above reasons that we feel Mr. Gastelum should be under close medical supervision for a minimum of three months following surgery, and should certainly be seen at frequent intervals by physicians familiar with his case for at least one year.

He is at present a fully eligible clinic patient at Cedars of Lebanon Clinic, and we look forward to following his case with interest.

Sincerely yours,

s/ Theodore A. Loseff
THEODORE A. LOSEFF, M. D.
Resident in Surgery

TAL:hw